IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI BILAL NAZKI

THE ACTING CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 11283 of 2005

Between:

M/s. Shivaraju Cotton Industries, Balaji Nagaram, Enumamula, Warangal, represented by its Proprietor,

Mr.Pathri Kommalu

..... PETITIONER

AND

1. The Assistant Commissioner (CT), Int. & LTU, Warangal Division. Warangal.
2. The Appellate Deputy Commissioner (CT), Warangal Division, KUDA Complex, Warangal.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ of Mandamus or any other appropriate writ or order declaring the action of the 2nd Respondent in passing the order dated 8-3-2004 for the assessment year 2001-02 (CST) without even giving an opportunity of being heard as contemplated under section 19(3) of APGST Act read with Rule 33(4) of APGST Rules as arbitrary, contrary to law, weight of evidence and probabilities of the petitioner's case and also in violation of principles of natural Justice and consequently direct the 1st Respondent to lift the Section 17 notice dated 9-5-2005 issued to petitioner's bank

namely, the Manager, Bank of India, Warangal Branch, forthwith, and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr. SHAIK JEELANI BASHA

Counsel for Respondents: GP FOR COMMERCIAL TAXES

The Court made the following :

ORAL ORDER:

(per Honourable Sri Bilal Nazki, the Acting Chief Justice)

Heard learned counsel for the parties and with their consent, the writ petition is being disposed of at this stage.

The appeal of the petitioner was rejected by an order of the appellate authority on 28.2.2005 on the ground that it had not paid the admitted tax and also not deposited 12.5 percent of the disputed tax etc. under Section 19 of the A.P.G.S.T. Act. The learned counsel for the petitioner, however, submits that no notice was given by the appellate authority to the petitioner before rejecting the appeal. However, in the mean time, the petitioner has deposited the admitted tax as well as 12.5% of the disputed tax on 13.4.2005. He, however, concedes that it was deposited after the impugned order was passed, but submits appeal could now be disposed off on merits. He relies on a judgment of this Court in Writ Petition No.3933 of 2005. In these circumstances, we feel that it would be in the interests of Justice if the appeal is restored as the conditions precedent for entertaining the appeal have now been satisfied. Accordingly, the Writ Petition is allowed and the appellate authority is directed to dispose of the Appeal on merits. On the basis of the pleadings by the petitioner, we have stated in our order that 12.5% of the disputed tax has been deposited and also that admitted tax has been paid. It will be, however, open for the appellate authority to satisfy itself that the amounts have been actually deposited.

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BILAL NAZKI, AC.J.

22.6.2005.

VR _____

G.CHANDRAIAH, J.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Wednesday the Twenty Second day of June, Two thousand and Five.

Asst. Registrar.

To

1. The Assistant Commissioner (CT), Int. & LTU, Warangal Division. Warangal.
2. The Appellate Deputy Commissioner (CT), Warangal Division, KUDA Complex, Warangal.

3. Two CCs to Government Pleader for Commercial Taxes, High Court Buildings, Hyderabad (OUT).

4) 2 CD copies

5) 1 CC to Mr. SHAIK JEELANI BASHA

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